APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1522

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR,
Petitioner

—*v.*—

STATE OF UTAH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED APRIL 5, 1979
CERTIORARI GRANTED JUNE 11, 1979

In the Supreme Court of the United States

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CECIL D. ANDRUS, SECRETARY OF THE INTERIOR,
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—*v.*—

STATE OF UTAH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Civil Case No. 76-1839

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

See No. 75-1460, Lewis, Seth, Morris

JUDGE MC KAY IS RECUSED

THE STATE OF UTAH, by and through its Division of State Lands, PLAINTIFF-APPELLEE

vs.

CECIL ANDRUS, individually and as Secretary of the United States Department of Interior,
DEFENDANT-APPELLANT

JUSTHEIM PETROLEUM COMPANY,
STATE OF IDAHO, AMICI

ATTORNEYS FOR APPELLANT

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Boise, Idaho 83720

Amicus: Frank J. Allen
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Salt Lake City, Utah 84111

NO. BELOW: C-74-64

JUDGE BELOW: Ritter

COURT REPORTER: Jenkinson

DATE OF JUDGMENT: 6/8/76

NOTICE OF APPEAL FILED: 8/2/76

ACTION COMMENCED: 3/4/74

VC	DATE	ACCOUNT OF APPELLANT
	9/14/76	U.S.A.

DATE	FILINGS—PROCEEDINGS

9/14/76 Cause docketed; record on appeal, Vols. I, II (transcript) (105 pp.), Vol. III (pleadings) (115 pp.), orig. (220 pp.); docketing statement, orig. & 9 cc.

Appearance—appellant—Taft, Clark, Snel

9/16/76 Order—assigned to Calendar B; appellant's brief due 10/7/76—Lewis

9/22/76 Appearance—Appellee—Jensen, Dewsnup

9/27/76 *Record On Appeal*—Vols. I, II, III—3cc each

9/28/76 Appearance—Appellee—Ashton

10/8/76 Appellant's motion for ext. to 10-22-76 to file brief —O & 3 cc—c/s

10/08/76 Appellant's motion to supplement record on appeal O & 3cc—c/s (to C

Appellant Granted to 10-22-76 to file brief—HKP—csl. ntfd.

10/20/76 Order: The motion of appellant to supplement the record on appeal with the orders described in the motion and letter request is granted. The Clerk of the United States District Court for the District of Utah shall transmit certified copies of this material to this Court. (Lewis, McWilliams) cnsl. ntfd. District Court ntfd.

10/20/76 *Record on Appeal*—Supplemental I (Pleadings) (28 pp.), orig.

10/26/76 Appellant's motion for leave to file brief out of time—O & 3 cc—c/s

Order: Appellant GRANTED leave to file brief out of time —RLH—csl.

Appellant's brief—O & 9 cc—c/s (preliminary—replaced by copies rec'

10/28/76 Appearance—appellant—Zagone

11/3/76 *Record on appeal*—Supp. Vol. I—3 cc.

DATE	FILINGS—PROCEEDINGS

11/11/76 Appellant's brief (replacing preliminary copies) —O & 9 cc—c/s

11/12/76 Appellee's motion for ext. to 11-29-76 to file brief —O & 3 cc—c/s

11/16/76 Order: Appellee GRANTED to 11/29/76 to file brief—HKP—cnsl. ntfd.

11/15/76 Peninsula Mining, Inc. motion for leave to intervene or in the alternative to file brief amicus curiae and participate in oral argument—O & 4 cc—c/s (To Panel)

11/24/76 Motion for leave to interv. or in the altern. to file brief amicus curiae and participate in oral argument (To Alternative Panel)

12/1/76 Appellee's motion for leave to file brief containing 79 typewritten pages—0 & 3 cc—c/s (To Panel)

12/1/76 Appellee's brief, 79 pgs. 0 & 9 cc—c/s

12/1/76 Order: The motion to intervene filed by Penninsula Mining, Inc., Clarence I. Justheim and Justheim Petroleum Company is denied. (McWilliams, Doyle) cnsl. ntfd.

12/3/76 Appellee's statement in opposition to intervention or appearance as amici curiae by Peninsula Mining, Inc., et al, 0 & 3 cc—c/s

12/3/76 Order: Appellee's motion for leave to file brief containing 79 typewritten pages is granted. (McWilliams, Doyle) cnsl. ntfd.

12/14/76 Appellant's motion to ext. to 12-22-76 for reply brief, 0 & 3 cc, c/s.

Order: Appellant GRANTED to 12-22-76 to file brief, RLH, cnsl ntfd.

12/17/76 Justheim Petroleum's petition for reconsideration of denial of permission to file amicus curiae brief, 0 & 5 cc, c/s. (to Panel)

DATE	FILINGS—PROCEEDINGS

12/27/76 ORDER: Permission granted to Justheim Petroleum Company to file amicus curiae brief, but not allowed participation in appeal.—all parties notified. (McWilliams, Doyle)

12/22/76 Appellant's reply brief, 10 cc, c/s.

12/23/76 Response of Appellee to amicus curiae petition, 0 & 3 cc, c/s.

1/31/77 Brief of amicus curiae State of Idaho, 0 & 3 cc, c/s. 6 addt'l. cc. rec'd. 2-7-77

2/25/77 Brief of Justheim Petroleum Co., amicus curiae, 11 cc. c/s.

3/3/77 Appellee's motion for leave to file reply brief, attached to reply brief (Panel)

Appellee's reply brief, 0 & 9 cc, c/s. (Panel-att'd to motion)

3/14/77 Order—Appellee is granted leave to file reply brief in response to appellant's reply brief—McWilliams, Doyle —Parties ntfd.

11/18/77 Set for December Special Session—Denver, Colorado

11/25/77 State of Idaho's motion for leave to present oral argument as amicus curiae—0 & 3 cc, c/s. (to panel 11/28/77)

Justheim Petroleum's motion for leave to present oral argument as amicus curiae—Orig. only, c/s. (to panel 11/28/77)

12/1/77 Appellant's supplemental authority—3 cc, c/s. (to panel)

12/2/77 Order: Upon consideration of the request of Justheim Petroleum for leave to make five minutes oral argument and the motion of the State of Idaho for just time to make oral argument, to motions are granted: to Justheim Petroleum Company to the extent of five minutes argument; and to the State of Idaho to make argument as permitted by the Court. (McWilliams)

DATE	FILINGS—PROCEEDINGS

12/14/77 argued and submitted—McWilliams, Barrett, McKay

1/9/78 Appellee's supplemental authorities—0 & 3 cc, c/s. (to panel)

4/4/78 Order: Upon the Court's own motion, the Court determines that the case must be reargued and resubmitted. It is therefore ordered: 1. The submission order of 12-14-77, is vacated. 2. Appeal is set for oral argument and submission to the Court in Div. I, at Denver, Colorado, on 4-20-78, at 10:00 a.m. 3. Counsel are not expected to submit additional briefs; but they may, if they desire, file any supplemental authorities which would brief the citations in their briefs up to date. (McWilliams, Barrett)

4/20/78 Argued and submitted—McWilliams, Barrett, Doyle

5/1/78 Appellant's supplemental authority, 0 & 1 cc, c/s (to panel 5/2/78)

6/30/78 Petition of Julius Petrofsky for leave to appear as amicus curiae, orig. & 3 cc., c/s (to panel 7/6/78)

8/8/78 OPINION—McWilliams, *Barrett*, Doyle—Publish Judgment: AFFIRMED

8/21/78 Appellant's mot for ext to 9/19/78 to file pet for rehearing en banc, 0 & 3 cc, c/s (to panel)

8/24/78 Order—petition of Julius Petrofsky for leave to appear as amicus curiae DENIED—McWilliams, Barrett, Doyle

Order—appellant GRANTED to 9/19/78 to file pet for rehearing—McWilliams, Barrett, Doyle

9/19/78 Appellant's unopposed motion to extend time for petitioning for rehearing en banc until 9/22/78, orig. & 3 cc., c/s—to panel

9/22/78 Appellant's petition for rehearing and suggestion for rehearing en banc, orig. & 9 cc., c/s—to panel

DATE	FILINGS—PROCEEDINGS

9/25/78 Order: Appellant GRANTED to 9/22/78 to file petition for rehearing en banc, McWilliams, Barrett, Doyle

10/10/78 Order: Appellee granted to 10/30/78 to file response to pet for rehearing and suggestion for rehearing en banc. McWilliams, Barrett, Doyle

10/23/78 Amicus Curiae's (Justheim) mot for leave to file memorandum, Orig only, c/s (to panel 10/24/78)

10/30/78 Appellee's response to appellant's pet for rehearing, 0 & 9 cc, c/s (to panel)

10/31/78 Amicus Curiae's (Justheim) letter in response to appellee's response to pet for rehearing, Orig. only, c/s (to panel)

Order: Justheim Petroleum GRANTED leave to file memo in opposition to rehearing. McWilliams, Barrett, Doyle

12/6/78 P.REHRG.ENB.DISP—Order denying appellant's petition for rehearing en banc by McWilliams, Barrett, Doyle

12/14/78 MDT.ISS—Mandate issued to district court

12/14/78 ROA.RTN.DC. *Record on appeal* to District Court. Vols. I,II Supplemental I.

12/21/78 MDT.RECPT.F—mandate receipt filed

12/22/78 ROA.RECPT.F—receipt for original record filed

4/9/79 P.WRIT.CERT.F—appellant's petition for writ of certiorari filed 4/5/79—Supreme Court No. 78-1522

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Willis W. Ritter, Judge

Alan Jenkinson, Court Reporter

Jury demand date:

THE STATE OF UTAH, by and through
its Division of State Lands

—*vs.*—

THOMAS S. KLEPPE, individually and as Secretary of the United States Department of the Interior

and

FRANK E. MOSS, K. GUNN MC KAY AND WAYNE OWENS, as Intervenors on behalf of plaintiff,

PLINTIFFS IN INTERVENTION

DATE	PROCEEDINGS
3/4/74vj	Verified Complaint filed. Summons issued.
3/4/74vj	Order to Show Cause on 3/22/74 at 10:00 A.M. filed.
3/22/74vj	Plaintiff's Memorandum re proposed escrow order filed.
3/22/74vj	Came on before the court on 3/22/74 on order to show cause. Pltf to prepare appropriate order re depositing monies from shale oil projects for approval by court and def.
3/26/74ds	Marshal's returns filed showing summons and order to show cause served on C Nelson Day 3-4-74, Attorney General USA 3-4-74; Rogers C. B. Morton 3-18-74.

DATE	PROCEEDINGS
4/5/74sb	Order Requiring Impoundment of Funds, signed by Judge Ritter 4-5-74. Notice mailed, ruled 77(d)
4/19/74sb	SUPPLEMENTAL ORDER, for Investment of Impounded Funds, signed by Judge Ritter 4/19/74, filed. Notice of Rule 77(d) mailed.
4/22/74kl	Supplemental Order for Investment of Impounded Funds, signed by Judge Ritter 4/22/74. Notice mailed, Rule 77(d).
4/22/74sb	Letter written by Verl C. Ritchie to First Security Bank of Utah, and Walker Bank and Trust Company, Re: C 74-64, filed.
4/24/74sb	ORDER, Confirming Investment of Impounded Funds, signed by Judge Ritter 4/24/74, filed. Notice of Rule 77(d) mailed.
5/3/74kl	Answer to complaint filed.
5/16/74sb	Supplemental Order for Investment of Impounded Funds, signed by Judge Ritter 5/16/74, filed. Notice of Rule 77(d) mailed.
5/29/74kl	Complaint of Intervenors, filed.
5/29/74kl	Memorandum in Support of Motion to Intervene, filed.
5/29/74kl	Application of Frank E. Moss, K. Genn Mackay and Wayne Owens for Permission to Intervene as Parties Plaintiff or in the Alternative to File a Brief as Amicus Curiae, filed.
6/7/74sb	Notice of Hearing on Friday, June 14, 1974 at 10:00 a.m. on Application of Frank Moss, K. Gunn Mackay & Wayne Owens for Permission to Intervene as Parties Plaintiff or in Alternative, to File a Brief as Amicus Curiae, mailed.
6/14/74vj	This matter vacated from the calendar and continued to next rule day.

DATE	PROCEEDINGS

6/21/74sb Notice of Hearing on Application of Frank Moss, K. Gunn MacKay & Wayne Owens for Permission to Intervene as Parties Pltf or in alternative to File Brief as Amicus Curiae, on Friday, June 28, 1974 at 10:00 A.M. mailed.

6/28/74ds Ed Clyde granted leave to file amicus curiae brief.

6/28/74kl Order Granting Petition for Leave to Appear As Amicus Curiae, filed. Notice 77(d) mailed.

7/25/74ds This matter came before the court uncalendared re reinvestment of money deposited in registry of the court. Money to be reinvested in compliance with previous order of the court.

9/5/74sb Pretrial notice mailed.

10/24/74sb Pursuant to the stipulation and good cause appearing, the Clerk is directed to provide to Walker Bank and Trust Company the funds now or hereafter in the Registry of the Court in this case for investment in ninety day U. S. Treasury Bills under and in conformity with the prior order of the Court in this case and the Agreement of Walker Bank and Trust Company executed in conformity, therewith, signed by Judge Ritter, 10/24/74. Notice of Rule 77(d) mailed.

2/28/75sb Peninsula Mining, Inc., Clarence I. Justheim, and Justheim Petroleum Company, Petitioners' Motion for Leave to Intervene, filed.

3/13/75sb Notice mailed of Hearing of Petitioner's Peninsula Mining, Inc., Clarence I. Justheim & Justheim Petroleum Co.'s Motion for Leave to Intervene, on Tuesday, March 25, 1975 at 10:00 A.M. mailed.

3/24/75sb Defendant's Memorandum of Points and Authorities in Opposition to Motion to Intervene, filed.

3/25/75vj Came on for hearing as calendared. Petitioner's motion for leave to intervene was denied.

DATE	PROCEEDINGS

3/26/75sb Order Denying Motion to Intervene, signed by Judge Ritter, 3/26/75. Notice of Rule 77(d) mailed.

4/17/75sb Plaintiffs in Intervention's Motion for Leave to Amend Complaint in Intervention and for Re-Argument of Motion for Leave to Intervene, filed, and DENIED by Judge Ritter, 4/18/75. Notice of Rule 77(d) mailed.

4/21/75sb Motion and Order Denying Renewed Motion to Intervene, signed by Judge Ritter 4/21/75. Notice of Rule 77(d) mailed.

5/23/75sb Notice of Appeal, filed.

5/23/75sb Undertaking for Cost on Appeal Bond, United Pacific Insurance Company, in the amount of $250.00 filed.

5/27/75rb Notice mailed to counsel on filing of Notice of Appeal.

5/29/75vj Pretrial notice mailed.

6/12/75vj Supplemental Order Providing for Investment of Funds Deposited with the Court signed by Judge Ritter on 6/12/75 filed. Notice mailed, rule 77(d).

6/16/75sb Motion and Order that Stanley K. Hathaway be substituted as the Defendant in this action, personally and in his capacity as Secretary of the United States Department of the Interior, in the place and stead of Rogers C. B. Morton, who has resigned his position as Secretary of the Interior, signed by Judge Ritter 6/16/75. Notice of Rule 77(d) mailed.

6/16/75sb Stipulation and Pretrial Order signed by Judge Ritter, 6/16/75. Notice of Rule 77(d) mailed.

6/24/75rb Record on Appeal mailed to Tenth Circuit Court of Appeals consisting of Volumes I & II.

7/18/75sb Plaintiff's Motion for Summary Judgment filed.

7/18/75sb Defendant's Motion for Summary Judgment filed.

DATE	PROCEEDINGS

8/18/75vj Stipulation and Order for Audit of Funds deposited with the Court signed by Judge Ritter on 8/18/75. Notice mailed, Rule 77(d).

8/18/75vj Letter to Judge Ritter from Messrs. Ashton, Dewsnup, Jensen and Child re stipulation and order for audit of funds deposited with the court filed.

8/25/75sb Certificate of Service to Defendant's Motion for Summary Judgment, filed.

9/15/75hs Memorandum of Points and Authorities in support of defendant's motion for summary judgment filed.

9/15/75hs Supplemental Affidavit of Donald G. Prince in support of plaintiff's motion for summary judgment filed.

9/19/75hs Letter to Court dated 9/15/75 filed.

9/19/75hs Memorandum in support of Plaintiff's motion for summary judgment filed.

10/15/75sb Memorandum of Plaintiff in Answer to Memorandum of Defendant, filed.

10/17/75sb Defendant's Answering Memorandum, filed.

11/8/76sb Order Authorizing Payment for Audit, signed by Judge Ritter, 1/8/76. Notice of Rule 77(d) mailed.

1/22/76sb Order that the Clerk of the Court is hereby directed and authorized to provide to Walker Bank and Trust Company the "residual funds" now or hereafter remaining in the registry of the court in this case for investment in ninety-day United States Treasury Bills under and in conformity with the prior orders of this court and in accordance with the agreement of Walker Bank and Trust Company, and that the Federal Reserve Branch shall hold such treasury bills for the court as a customer of said bank, signed by Judge Ritter, 1/22/76. Notice of Rule 77(d) mailed.

DATE	PROCEEDINGS

2/19/76hs Notice mailed for hearing on Wednesday, February 25, 1976 at 10:00 a.m. on (1) Pltf's motion for summary judgment and (2) Def's motion for Summary Judgment.

2/13/76sb ORDER that Thomas S. Kleppe should be and is hereby substituted as the party defendant in the place and stead of Stanley K. Hathaway, signed by Judge Ritter, 2/12/76. Notice of Rule 77(d) mailed.

2/25/76hs Came on for hearing on 2/25/76 on (1) Pltf's motion for summary judgment and (2) Def's motion for summary judgment. Arguments of counsel were heard. Court directed that the plaintiff prepare an appropriate order providing for the relief asked for and also to file a memorandum in depth, precise and definity to his evidence; said memorandum due in 20 days; defendants allowed 20 days thereafter in which to file its reply memorandum.

4/5/76sb ORDER that the foregoing Stipulation for Extension of Time for Filing Defendant's Reply Memorandum is hereby approved and that the defendant may have to and until the 16th day of April, 1976, to file its Reply to Plaintiff's Supplemental Memorandum of Law filed Herein, signed by Judge Ritter, 4/5/76. Notice of Rule 77(d) mailed.

4/7/76sb Letter from Louis Ferandez to Clerk of Court requesting to be notified of any further action to be taken in this matter, filed.

4/19/76sb Defendant's Supplemental Memorandum of Law, filed.

5/20/76hs Notice mailed for Oral Arguments and Ruling of Court on each party's motions for summary judgment on Tuesday, May 25, 1976 at 10:00 a.m.

5/25/76hs Came on for hearing on 5/25/76 for Rule of Court —motions for Summary Judgment as filed by parties. Court found for the plaintiff. Appropriate order to be filed by Mr. Dewsnup.

DATE	PROCEEDINGS

6/3/76hs Notice mailed for hearing on 6/10/76 on Disposition of Crosby matter and further status report on case.

6/2/76sb ORDER Providing for Investment of Funds Deposited with the Court, signed by Judge Ritter, 6/2/76. Notice of Rule 77(d) mailed.

6/10/76sb Letter to Judge Ritter from Richard L. Dewsnup, filed.

6/8/76sb FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECREE signed by Judge Ritter, 6/8/76. Notice of Rule 77(d) mailed.

6/8/76sb ORDER for Issuance of Checks for Investment of Funds Deposited with the Court, signed by Judge Ritter, 6/8/76. Notice of Rule 77(d) mailed.

7/1/76sb Receipt, filed.

7/1/76sb ORDER for Issuance of Check for Investment of Funds Deposited with the Court, signed by Judge Ritter, 7/1/76. Notice of Rule 77(d) mailed.

7/16/76sb Order of Dismissal of Appeal by Tenth Circuit Court of Appeals, filed. Constituting Filing of Mandate, filed.

8/2/76sb NOTICE OF APPEAL, filed.

8/2/76rb Notice mailed to counsel re filing of Notice of Appeal.

8/3/76sb Notice mailed of Filing of Mandate 8/16/76 at 2:00 P.M.

8/16/76hs Came on for filing of mandate on 8/16/76. There being no objections, court directed that mandate be filed.

8/16/76hs Mandate filed.

9/7/76sb Transcript of Proceedings of February 25, 1976, filed.

9/7/76sb Transcript of Proceedings of May 25, 1976, filed.

DATE	PROCEEDINGS

9/10/76rb Record on Appeal mailed to Tenth Circuit.

9/20/76sb Copy of Letter to Dirk D. Snel, Esq., from Tenth Circuit, Re: Appeal, filed.

9/27/76sb Copy of Letter Re: Return of Record on Appeal to Tenth Circuit from Supreme Court.

10/5/76rb Record on Appeal returned from Tenth Circuit (First Appeal)

10/7/76sb Def's Motion for Stay of Injunction Pending Appeal, filed.

10/7/76sb Affidavit of Paul Howard, filed.

10/7/76rb Letter dated October 5, 1976 filed to Clerk from Dirk D. Snel, Atty. Appellate Section, Dept. of Justice, requesting supplemental record.
Copy of Appellant's Motion to Supplement Record on Appeal directed to Tenth Circuit.

10/18/76rb Supplemental Record on Appeal mailed to Tenth Circuit.

10/18/76hs Order for issuance of check for investment of funds deposited with the court, with stipulation thereto signed by Judge Ritter on 10/18/76 and filed.

10/18/76hs Order granting partial stay of injunction pending appeal, with Plaintiff's consent thereto signed by Judge Ritter on 10/18/76 and filed.

10/19/76hs Notice mailed, Rule 77(d) on orders under date of 10/18/76.

10/19/76hs Received of Walker Bank and Trust Company filed.

10/21/76sb Copy of Order requesting Supplemental Record by the Tenth Circuit Court of Appeals.

2/4/77sb ORDER for Issuance of Check for Investment of Funds Deposited with the Court signed by Judge Ritter, 2/3/77. Notice of Rule 77(d) mailed.

DATE	PROCEEDINGS

7/1/77sb ORDER For Issuance of Check for Investment of Funds Deposited with the Court signed by Judge Ritter, 7/1/77. Notice of Rule 77(d) mailed.

6/7/78sb ORDER FOR ISSUANCE OF CHECK FOR INVESTMENT OF FUNDS DEPOSITED WITH THE COURT signed by Judge Anderson, 6/7/78. Notice of Rule 77(d) mailed.

10/19/78sb ORDER for Issuance of Check for Investment of Funds Deposited with the Court signed by Judge Anderson 10/19/78. Copies mailed to counsel.

12/18/78sb Certified Copy of the Judgment and a copy of the Opinion of the Tenth Circuit AFFIRMING the Decision of the District Court.

1/8/79sb Notice mailed of Filing of Mandate as of 1/8/79.

4/12/79ds Petition for Writ of Certiorari filed on April 5, 1979 with Supreme Court of the U.S.

5/29/79ds Stipulation re investment of accumulated sums. Order for Issuance of Check for Investment of Funds Deposited with the Court, signed by Judge Anderson, 5-29-79. Copy mailed to counsel.

Receipt signed by Walker Bank & Trust Co.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil No. C-74-64

THE STATE OF UTAH, by and through its Division of State Lands, PLAINTIFF

v.

ROGERS C. B. MORTON, individually and as Secretary of the United States Department of the Interior, DEFENDANT

VERIFIED COMPLAINT

[Filed Mar. 4, 1974]

Plaintiff alleges that:

1. Plaintiff has the statutory responsibility, acting for and in behalf of the State of Utah, to manage and administer all lands received by the State of Utah under the school land grants from the United States, including those lands which are the subject of this litigation; Defendant Rogers C. B. Morton is the Secretary of the Department of the Interior of the United States of America, with authority to administer federal public lands.

2. Jurisdiction of this Court is invoked under 28 U.S.C. 1361 (mandamus) and 28 U.S.C. 1331 (federal question); and venue is properly laid under 28 U.S.C. 1391(e)(3) in that the real property subject to this action is located within Uintah County, State of Utah, and thus within the geographic jurisdiction of the Central Division of this Court. This action is further prosecuted pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 701 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. 2201, *et seq.*

3. The amount in controversy, exclusive of interest, attorneys' fees and costs, exceeds $10,000.00.

4. By virtue of the provisions of the Utah Enabling Act (28 Stat. 107, July 16, 1894), the United States granted to Utah sections 2, 16, 32 and 36 within each township as a land grant for the support of common schools, and where:

> such sections, or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress, other lands equivalent thereto . . . . are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior . . . (Section 6, 28 Stat. 107, July 16, 1894).

By Section 10 of said Enabling Act, it was provided "that the lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund," thus creating a permanent trust for the benefit of public education and the common schools. Utah complied with and honored this trust, by providing in Article X, Section 3, Constitution of Utah, that:

> The proceeds of the sales of all lands that have been or may hereafter be granted by the United States to this state, for the support of the common schools . . . . shall be and remain a permanent fund, to be called the State School Fund, the interest of which only, shall be expended for the support of the common schools.

and further, by providing in Section 7 of said Article X that: "All public school funds shall be guaranteed by the State against loss or diversion."

5. The Act of May 3, 1902 (32 Stat. 188. 189; 43 U.S.C. 853) expressly made the Act of February 28, 1891 (43 U.S.C. 851) applicable to the State of Utah, thus clearly authorizing Utah to make school indemnity selections in lieu of sections 2, 16, 32 and 36 in all in-

stances where said sections were appropriated for other purposes, and where Utah thus did not receive the school lands to which it was entitled under the statutory grant. Said Section 43 U.S.C. 851 expressly provides that all such school indemnity selections shall be made on the basis of "equal acreage;" and that all such selections shall be made in accordance with the provisions of 43 U.S.C. 852. Said Section 852 provides, among other things, that school indemnity selections may include lieu lands that are mineral in character where the base lands for which selection is made are mineral in character.

6. By September 10, 1965, there were within the State of Utah more than 160,000 acres of school sections in place, mineral in character, to which the State was denied title for one cause or another, and for which no school indemnity selections had then been made. Thereafter the State of Utah, beginning on said date of September 10, 1965, made school indemnity selections from federal lands which the State Director of the Bureau of Land Management and his staff reported to be available for school indemnity selections by the State of Utah as mineral lands in lieu of school sections, also mineral in character, to which the State had not received title under the statutory grant. These selections covered lands located within Uintah County, State of Utah, and were duly and regularly filed with the Bureau of Land Management under Sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852) on the following dates for the amounts of land indicated:

September 10, 1965	17,589.44 acres
February 8, 1966	1,760.00 acres
May 17, 1967	21,103.32 acres
October 20, 1967	3,232.35 acres
November 2, 1967	14,689.83 acres
December 19, 1969	25,583.20 acres
February 17, 1970	38,058.81 acres
November 8, 1971	11,044.87 acres
November 15, 1971	11,977.49 acres
November 19, 1971	12,216.59 acres
TOTAL	157,255.90 acres;

and said selection lists are more fully explained and the land covered thereby more fully described in Exhibit A [1] which is attached hereto and by this reference is incorporated as a part of this Complaint.

7. The Act of June 24, 1966 (80 Stat. 220, 43 U.S.C. 582(a)) authorized school indemnity selections "of tracts of reasonable size, taking into consideration, location, terrain, and adjacent land ownership and uses." Plaintiff, in consultation and cooperation with the State Director of the Bureau of Land Management, made most of the selections alleged above after said date of June 24, 1966, in accordance with recommendations of said State Director, in the vicinity of numbered school sections in place in Uintah County to which Utah had received title under the statutory grant. These selections thus made in consultation with said Bureau of Land Management were to assure compliance with said Section 852(a) and to assure that the selections previously filed by Plaintiff were likewise in compliance with all applicable requirements of law. The school indemnity selection lists so filed were examined by the State Director and his Staff in the Bureau of Land Management, and were found to be proper selections of indemnity lands, and said selection lists were thus forwarded to the Bureau of Land Management and to the Secretary of the Interior in Washington, D.C., for final examination and action required by law.

8. The lands selected by Plaintiff as alleged above were available for selection under said Sections 851, 852 and 852(a), Title 43, United States Code, and the base lands for which selection was made were mineral in character as required by said Section 852; and the selections further were in compliance with all applicable provisions of said statutes. As a result thereof, Plaintiff obtained equitable title to the subject lands covered within each school land indemnity selection list as of the date such indemnity selection list was filed; and Plaintiff thus became entitled to a transfer of legal title

[1] Exhibit A is omitted. The selection lists described therein are set forth in Finding No. 4 of the district court (Pet. App. C 57a-61a).

to said lands by appropriate action of Defendant, without unreasonable delay.

9. Defendant, acting in his official capacity, has unlawfully withheld and unreasonably delayed acting on such indemnity selections and the transfer of legal title to the subject lands to which Plaintiff is entitled as a matter of law. Defendant advised the State of Utah by letter dated February 14, 1974, that said indemnity selections will not be acted upon until a determination has been made as to whether the base lands for which selection was made are of comparable value with the lieu lands selected; and that if the lieu lands selected are found to have a greater value than the base lands, so that there is a grossly disparate value between the base lands and the lieu lands selected, the selections will not be approved.

10. The Defendant has no authority under the law to conduct a study of the relative values of the base lands and the lieu lands selected, nor to substitute a requirement of "comparable value" for equal acreage, but is empowered to determine only whether the base lands and the lieu lands are both mineral in character and whether the selection applications otherwise are in compliance with law. If so, Defendant is obligated by law to approve the selections without further delay and make the appropriate transfer forthwith on an acre-for-acre basis to the State of Utah.

11. The conduct of Defendant in unreasonably delaying and refusing to approve transfer of legal title to the lieu lands selected by Plaintiff is clearly in excess of and contrary to his statutory authority; without any authority of law whatsoever; and is (a) constituting a breach of the school land trust which Congress granted and created for the benefit of Utah's public schools, (b) causing Plaintiff to suffer legal wrong as a result of such unlawful action, (c) unlawfully withholding and unreasonably delaying Plaintiff's entitlements under the selection applications, (d) arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and (e) short of any statutory right.

12. Defendant has initiated a proto-type oil shale leasing program, pursuant to which two tracts located within Utah, and within the lieu lands selected by Plaintiff, have been identified and scheduled for competitive leasing for oil shale, as follows: Tract U-a, containing 5,120 acres, is scheduled for the opening of competitive bids on March 12, 1974; and Tract U-b, consisting of 5,120 acres, is scheduled for opening of competitive bids on April 9, 1974.

13. It is expected that bids will be submitted on the tracts mentioned above, and said bids must include deposits of annual rentals for the first year under any lease that would be awarded to the successful bidder, plus an amount of bonus money to be paid for the privilege of obtaining the lease; and that these funds will thus come within the custody of Defendant on the bid dates indicated above; but that in fact Plaintiff as a matter of law will be the equitable owner of said funds since they will be derived from lease rights on the land of which Utah is the equitable owner.

14. Plaintiff does not seek to enjoin or delay competitive leasing of the two tracts identified above, and interposes no objection to the issuance of leases under said prototype leasing program to cover the two tracts above described; but alleges that any such acts will be, in legal effect, as trustee for the State of Utah, and that when Plaintiff obtains legal title to the subject lands, Plaintiff will accept an assignment of any leases awarded on said lands pursuant to the proto-type leasing program, and will honor all terms and conditions of said leases to the same extent as if Plaintiff had been the original lessor; however, Plaintiff alleges that after Defendant determines the successful bidder, if any, as to each of the two tracts and makes an award of lease for each tract, that the sums paid by the successful bidder for each tract should forthwith be deposited into Court, thereupon to be deposited in an interest-bearing account under the direction of the Court until Plaintiff's rights and entitlements are determined herein, and that said funds then be distributed in accordance with an appropriate Order of the Court.

15. Unless the Court issues its Order requiring such funds to be paid to the Clerk of the Court, Plaintiff is fearful that said funds will be deposited in the United States Treasury and that Plaintiff will thereafter be unable to recover said funds expeditiously, if at all, and that Plaintiff would thus suffer immediate and irreparable injury and damage unless the Court issues such Order.

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

A. For a declaratory judgment and decree, adjudicating that as a result of the school indemnity selection lists duly filed by Plaintiff, Plaintiff became the equitable owner of the 157,255.90 acres of land which is the subject of this action, and is entitled to a prompt approval of the selection lists on file for said lands, and for a prompt conveyance of legal title to the same to Plaintiff;

B. For an Order in mandamus requiring Defendant to approve forthwith Plaintiff's school indemnity selection lists and to transfer legal title to the subject lands to Plaintiff;

C. For an Order to Show Cause, requiring Defendant or his duly authorized representative to appear before this Court on a day and time certain and prior to the scheduled bid opening on March 12, 1974, and to then and there show cause, if any he has, why a preliminary injunction should not issue forthwith requiring Defendant to deposit with the Clerk of the Court all lease rentals and bonus proceeds received from the successful bidders on the oil shale leases for the two proto-type tracts located in Utah and within the lieu lands selected by Plaintiff; and further requiring that said funds be properly invested in interest-bearing accounts during the pendency of this action, with said principal sums and interest accumulated thereon to be paid and distributed in accordance with the final decree of the Court in this action;

D. For costs incurred in this action, and for such other relief as shall appear to be appropriate in the premises.

Dated this 11th day of March, 1974.

/s/ Vernon B. Romney
VERNON B. ROMNEY
Utah Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Telephone: 328-5261

PAUL E. REIMANN
WILLIAM T. EVANS
DALLIN W. JENSEN
Assistants Attorney General

RICHARD L. DEWSNUP
CLIFFORD L. ASHTON
MARVIN J. BERTOCH
Special Assistants

VERIFICATION

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

CHARLES R. HANSEN, being first duly sworn upon oath, says that he is the Director of the Division of State Lands of the State of Utah, and that he has read the foregoing Complaint and is familiar with the contents thereof, and that to the best of his knowledge, information and belief all of the allegations of fact contained therein are true.

/s/ Charles R. Hansen
CHARLES R. HANSEN
Director
Utah Division of State Lands

Subscribed and sworn to before me this 28th day of February, 1974.

/s/ Lynda Belnac
Notary Public

My Commission Expires: 11-1-77

Residing in Salt Lake City, Utah

ANSWER

[Filed May 3, 1974]

Defendant Rogers C. B. Morton, Secretary of the Interior, answers the verified complaint as follows:

First Defense

The Court lacks jurisdiction of the subject matter.

Second Defense

The complaint fails to state a claim upon which relief can be granted.

Third Defense

1. The allegations in the first clause of paragraph 1 are conclusions of law which require no answer. Defendant admits the remaining allegations in paragraph 1.

2. Defendant admits that the real property involved in this action is located within Uintah County, State of Utah. The remaining allegations in paragraph 2 are conclusions of law which require no answer.

3. Defendant admits the allegation in paragraph 3.

4 and 5. Defendant admits the allegations in paragraphs 4 and 5 but affirmatively alleges that the cited statutes and constitutional provisions are the best evidence as to their terms.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 6. Defendant denies that the State Director of the Bureau of Land Management and his staff reported that the lands applied for by plaintiff as base lands for the selections are mineral in character. Defendant admits the remaining allegations in paragraph 6.

7. The allegation in the first sentence of paragraph 7 is a conclusion of law which requires no answer. Defendant admits that part of plaintiff's selections were made after June 24, 1966, and that the school indemnity selection lists were examined by the State Director of the Bureau of Land Management and his staff and reported

to the Director of the Bureau of Land Management and the Secretary of the Interior for action. Defendant denies the remaining allegations in paragraph 7.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the base lands for which selection was made were mineral in character. Defendant denies the remaining allegations in paragraph 8.

9. Defendant denies the allegations in the first sentence of paragraph 9. Defendant admits that the allegations in the second sentence of paragraph 9 are substantially correct but affirmatively alleges that defendant's letter of February 14, 1974, is the best evidence as to its contents.

10. The allegations in paragraph 10 are conclusions of law which require no answer but which defendant nevertheless denies.

11. The allegations in paragraph 11 are conclusions of law which require no answer but which defendant nevertheless denies.

12. Defendant admits the allegations in paragraph 12.

13. Defendant admits the allegations in the first clause of paragraph 13 but denies the remaining allegations in that paragraph.

14. Defendant denies that the leasing of oil shale lands by defendant "will be, in legal effect, as trustee for the State of Utah." Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of paragraph 14. The allegations in the second sentence of paragraph 14 require no answer in light of the Court's orders of April 5 and 22, 1974, requiring the impoundment of lease rental proceeds.

15. The allegations in paragraph 15 require no answer in light of the Court's orders of April 5 and 22, 1974.

Defendant denies every allegation of the complaint which is not expressly admitted.

WHEREFORE, defendant respectfully requests that the complaint be dismissed and that defendant be awarded his costs.

/s/ C. Nelson Day
C. NELSON DAY
United States Attorney
200 U.S. Post Office and
Court House
350 South Main
Salt Lake City, Utah 84101
Telephone: (801) 524-5685

Attorney for the Defendant

STIPULATION AND PRE-TRIAL ORDER

[Filed June 16, 1975]

The parties hereby stipulate to the following as the Pre-Trial Order in this case, and respectfully request the Court to approve and adopt the same.

1. *Jurisdiction.*

Plaintiff alleges jurisdiction under 28 U.S.C. 1331 and 1361. Without admitting that this is a proper action in mandamus under 28 U.S.C. 1361, defendant admits the Court's jurisdiction of the action for the limited purpose of ruling on issues of law, hereafter to be identified, with respect to which a judicial interpretation of the law at this time would be in the interest of administrative and judicial economy.

2. *Amendments to pleadings.*

None.

3. *Preliminary motions remaining to be determined.*

No preliminary motions pending. The parties request leave to file, within 60 days from the date of the pretrial order, their respective disposition motions and request that further trial proceedings, including discovery, be stayed pending the Court's ruling on such motions.

4. General nature of the claims of the parties.

(a) *Plaintiff's claim*: Plaintiff seeks a judicial determination that:

(1) As a result of certain school indemnity selection lists filed by plaintiff, in accordance with applicable statutory requirements and criteria, plaintiff became the equitable owner of 157,255.9 acres of land in the State of Utah described in those lists;

(2) Defendant is required by law forthwith to approve plaintiff's selections and to transfer legal title to the selected lands to the State of Utah.

(b) *Defendant's claim*:

(1) Before any right to specific land can vest in plaintiff pursuant to the filing of a school indemnity selection list, the selected land must be classified by the Secretary of the Interior, pursuant to section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, as suitable for disposition in satisfaction of plaintiff's claim to indemification for lost school grant lands;

(2) Disparity in the value of selected lands and the lost school grant lands which are offered as base for the selections is a factor properly to be weighed by the Secretary of the Interior in determining whether the selected lands are suitable for disposition in satisfaction of a state's claim to indemnification for lost school lands; and

(3) Irrespective of the foregoing issues, plaintiff is precluded from seeking affirmative judicial relief until such time as it has exhausted its administrative remedies.

5. *Uncontroverted facts.*

The following material facts are established by admissions in the pleadings or by stipulation of counsel:

(a) Between September 10, 1965, and November 19, 1971, plaintiff filed in the Department of the Interior 194 school indemnity selections pursuant to 43 U.S.C. 851, 852 and 852(a). These selections covered 157,255.9 acres of land in Uintah County, Utah and were filed in lieu of, and as indemnification for, an equal acreage of school sections in place to which plaintiff would have been entitled under the Utah Enabling Act of July 16, 1894, 28 Stat. 107, but to which plaintiff was denied title because of the creation of federal reserves, the initiation of private rights in such lands either prior to survey or prior to statehood, or for other reasons;

(b) Plaintiff's selection lists are still pending before the Department of the Interior.

(c) The Department of the Interior has initiated a prototype oil shale leasing program under which

the Department selected two tracts of land (identified as Tract U-a and Tract U-b) of 5,120 acres each within the State of Utah for competitive lease bidding. These tracts of land were included in plaintiff's school indemnity selections; and

(d) Pursuant to plaintiff's motion, the Court, on April 5, 1974, issued an order requiring defendant to deposit all bonus payments and rental proceeds received from the successful bidders on Tracts U-a and U-b with the clerk of the court, to be invested in interest-bearing securities pending disposition of this case on the merits. Such payments, to date, have been so invested.

6. *Issues of fact and law.*

(a) *Contested issues of fact.*

None.

(b) *Contested issues of law.*

(1) Whether, by the mere filing of its indemnity selection lists in accordance with applicable statutory requirements and criteria, plaintiff has done all that is required by law to earn equitable title to the selected lands so that all that remains to be done is the ministerial act of issuance of patents;

(2) Whether classification of the selected lands by the Secretary of the Interior, pursuant to the Taylor Grazing Act, as suitable for disposition in satisfaction of plaintiff's school indemnity selection rights is a prerequisite to the vesting of any right to, or interest in, such lands in plaintiff;

(3) If classification under the Taylor Grazing Act is such a prequisite, then (i) whether the comparative values of the selected lands and the lost school lands ("base" lands) may be considered a factor in determining whether land should be classified for disposition in satisfaction of plaintiff's indemnity rights; and (ii) whether such classification is a "major federal action" within the meaning of the National Environmental Policy Act.

(4) Whether, in any event, plaintiff must exhaust its administrative remedies before seeking affirmative judicial relief.

7. *Witnesses.*

The parties contemplate calling no witnesses.

8. *Exhibits.*

The parties contemplate the submission of no exhibits. However, in the event of any controversy with respect to the current status of plaintiff's indemnity selection lists, defendant will furnish the Court, by affidavit or otherwise, such information as may be needed to show that status.

9. *Discovery.*

The parties contemplate no discovery.

10. *Trial and estimated time.*

The parties believe the controversy should be disposed of upon motion for judgment on the pleadings or motion for summary judgment without a trial. If oral argument is granted by the court, it is anticipated that each party will desire approximately 45 minutes.

DATED this 10th day of June, 1975.

/s/ Ramon M. Child
RAMON M. CHILD
United States Attorney
200 U.S. Court House Bldg.
350 South Main Street
Salt Lake City, Utah 84110

Gerald S. Fish, Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendant,
Secretary of the Interior

/s/ Clifford L. Ashton
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/s/ Richard L. Dewsnup
RICHARD L. DEWSNUP
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/s/ Dallin W. Jensen
DALLIN W. JENSEN
Asst. Attorney General
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Salt Lake City, Utah 84114
Attorneys for Plaintiff,
State of Utah

ORDER

IT IS HEREBY ORDERED that the foregoing Stipulation of the parties should be and is hereby approved and adopted as the Pre-Trial Order to govern further proceedings in this action.

DATED this 16 day of June, 1975.

/s/ Willis W. Ritter
WILLIS W. RITTER
Chief Judge
United States District Court

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Filed Aug. 18, 1975]

Plaintiff State of Utah respectfully moves the Court for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure, in accordance with the prayer of Plaintiff's Complaint. Plaintiff requests the Court to adjudicate and determine that Utah obtained equitable title to the lands in dispute by virtue of filing the indemnity selections in accordance with all legal requirements, that Utah is entitled to all funds on deposit with the Court and interest accumulated thereon, and that the Secretary of the Interior is obligated by law forthwith to issue clear lists covering the subject lands selected by Utah.

This motion is based on the pleadings on file herein, on the Stipulation of the parties dated June 10, 1975, on the Affidavit of Charles R. Hansen (attached to this motion as Exhibit A and by this reference made a part of this motion), and on the ground that there are no material facts in controversy in this proceeding.

The parties have agreed to file memoranda of law in support of their respective motions for summary judgment on or before September 15, 1975, and it is requested that the Court set this matter for oral argument at the earliest date thereafter that is convenient to the Court. It is further requested that, if convenient to the Court, the matter be heard pursuant to a special setting rather than on the regular law and motion calendar.

DATED this 18th day of August, 1975.

Respectfully submitted,

/s/ Clifford L. Ashton
CLIFFORD L. ASHTON
Special Assistant Attorney General
5050 Highland Drive
Salt Lake City, Utah 84117

/s/ Richard L. Dewsnup
RICHARD L. DEWSNUP
Special Assistant Attorney General
445 East 200 South, Suite 9
Salt Lake City, Utah 84111

/s/ Dallin W. Jensen
DALLIN W. JENSEN
Assistant Attorney General
442 State Capitol Building
Salt Lake City, Utah 84114
Attorneys for Plaintiff
State of Utah

EXHIBIT A

AFFIDAVIT OF CHARLES R. HANSEN

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

CHARLES R. HANSEN, first being duly sworn upon oath, deposes and says that he is the Director of the Division of State Lands of the State of Utah, and that:

1. During numerous meetings between 1966 and 1974 between representatives of the Utah Division of State Lands and representatives of the office of the State Director of the Bureau of Land Management, held to discuss the adequacy and status of Utah's oil shale selections as indemnity for lost school lands (which are the subject of the present litigation), Utah was advised that there was no objection or question on the part of the Federal Government with respect to whether such selections were in compliance with all statutory and regulatory requirements pertaining thereto, with the exception of the advisability of the State of Utah making selections which would constitute "manageable blocks" of land, and in this regard Utah did thereafter file such selections in such a manner as to satisfy all suggestions offered by the Bureau of Land Management. The final suggestions by the Bureau in this regard were explained in a meeting held December 19, 1968, attended by myself and members of my staff as representatives of the State of Utah and by Mr. Robert D. Nielsen, as the State Director of the Bureau of Land Management, and members of his staff as representatives of the Bureau of Land Management. The suggestions offered by the Bureau were formally approved by the Utah Board of State Lands on January 15, 1969, and in compliance therewith Utah subsequently prepared and filed the selection lists dated December 19, 1969 (25,583.20 acres), February 17, 1970 (38,058.81 acres), November 8, 1971 (11,044.87 acres), November 15, 1971 (11,977.49 acres), and November 19, 1971 (12,216.59 acres), and this brought the total

pending state selections on oil shale lands to 157,255.90 acres.

2. On numerous occasions I have discussed the status of these pending applications with appropriate representatives of the Federal Government, including discussions with Harrison Loesch, former Assistant Secretary of Interior, and with Reid Stone, Federal Oil Shale Coordinator, and on each occasion I was advised that federal action on the State selections was awaiting development of the Federal proto-type program for oil shale leasing, and that as soon as that program was developed to the point that the Federal Government was ready to issue the original leases, they believed that the selection lists as filed by Utah would be approved and clear lists issued. It was not until February 14, 1974, that Secretary Rogers Morton formally advised Governor Calvin Rampton that the Department of Interior intended to apply a comparative value test to determine whether the oil shale lands selected had substantially more value than the base lands for which selection was made.

3. Documents from the files of my office and from the files of the Bureau of Land Management, which appear to have some relevance to the matters mentioned above and to this litigation, are identified below and are appended to this affidavit in chronologival sequence, and to the best of my knowledge they are true and correct copies, and by this reference said documents are included within and made a part of this Affidavit;

Appendix A: Document dated February 9, 1961, consisting of three pages plus three fold-out tabulations, which is an illustrative example of a clear list which the Bureau of Land Management did issue to the State of Utah in response to selection application for lands believed to contain oil shale deposits.

Appendix B: Document dated September 14, 1962, consisting of two pages, which is a memorandum from the Associate Solicitor of the Division of Public Lands to the Director of the Bureau of Land Management.

Appendix C: Document dated September 11, 1964, consisting of one page, which is a report to the State

Director from the Vernal District Manager of the Bureau of Land Management, discussing lieu selections.

Appendix D: Document dated October 29, 1964, consisting of one page, which is a memorandum to the State Director from the Vernal District Manager, discussing lieu selections.

Appendix E: Document dated May 24, 1965, consisting of one page, which is a letter from the Utah Director of State Lands to the State Director of the Bureau of Land Management, discussing lieu selections.

Appendix F: Document dated November 22, 1965, consisting of two pages, which is an illustrative confirmatory patent to confirm title to school lands in place.

Appendix G: Document dated December 15, 1966, consisiting of three pages, which is a memorandum from the Director of the Bureau of Land Management to the Secretary of the Interior discussing comparative values of base lands and lieu lands, and indicating the approval thereof by the Secretary under date of January 18, 1967.

Appendix H: Document dated June 30, 1967, consisting of four pages, which is a memorandum to the State Director from the Vernal District Manager, discussing lieu selections.

Appendix I: Document dated November 24, 1967, consisting of one page, which is a memorandum to the State Director from the Vernal District Manager, discussing lieu selections.

Appendix J: Document dated May 8, 1968, consisting of two pages, which is a memorandum to the State Director from the Vernal District Manager, discussing lieu selections.

Appendix K: Document dated December 19, 1968, consisting of three pages, which is a memorandum prepared by J. E. Keogh of the Bureau of Land Management summarizing a meeting between state and federal officials concerning lieu selections.

Appendix L: Document dated May 9, 1969, consisting of four pages, from the State Director to the Director of the Bureau of Land Management, discussing, inter alia, lieu selections.

Appendix M: Document dated July 1, 1971, consisting of two pages, which is a letter to the Chairman of the Council on Environmental Quality from the Deputy Solicitor of the Department of Interior, discussing the applicability of the National Environmental Policy Act to various land grants.

Appendix N: Document dated May 23, 1972, consisting of one page, which is a letter from the Secretary of Interior to the Governor of Utah, concerning lieu selections.

Appendix O: Document dated January 24, 1974, consisting of one page, which is a letter from the Governor of Utah to the Secretary of Interior, concerning lieu selections.

Appendix P: Document dated February 14, 1974, consisting of one page, which is a letter from the Secretary of Interior to the Governor of Utah, discussing lieu selections.

Appendix Q: Document dated February 15, 1974, consisting of one page, which is a letter from the Solicitor of the Interior to the Utah Attorney General.

Appendix R: Document dated February 22, 1974, consisting of two pages, which is an agreement between the State of Utah and the Department of Interior concerning the proto-type oil shale leasing program.

Appendix S: Document dated February 25, 1974, consisting of two pages, which is a memorandum from the Library of Congress to Senator Frank E. Moss, concerning the applicability of the National Environmental Policy Act to certain land grants.

Appendix T: Document dated March 21, 1974, consisting of five pages, which is a memorandum to State Directors from the Director of the Bureau of Land Management concerning state indemnity selections, and which includes as appendices the February 14, 1974 letter from Secretary Morton to Governor Rampton and the "Udall Memorandum" prepared December 15, 1966, and approved January 18, 1967.

Appendix U: Document dated May 13, 1974, consisting of one page, which is a memorandum from the Associate Director of the Bureau of Land Management

to the State Directors, concerning state indemnity selections.

Appendix V: Undated document, consisting of two pages, which is a letter from the Solicitor of Interior to Senator Frank E. Moss, concerning the applicability of the National Environmental Policy Act to lieu selections. I believe this letter was transmitted in February or March of 1974.

Dated this 18th day of August, 1975.

/s/ Charles R. Hansen
CHARLES R. HANSEN

SUBSCRIBED AND SWORN to before me this 18th day of August, 1975.

/s/ Lynda Belnac
Notary Public, Residing in
Salt Lake City, Utah

My Commission Expires: 10-1-77

APPENDIX B

Sept. 14, 1962

MEMORANDUM

TO: Director, Bureau of Land Management

FROM: Associate Solicitor, Division of Public Lands

SUBJECT: State Indemnity Selections

In considering an application by a state for indemnity selection under 43 U.S.C. 851, 852, the disparity in values between the lands offered as base and the lands selected cannot be considered. As was stated in *Stephen Blaine Keilstone* (A-25889, August 24, 1950):

> "The application is one to indemnify the State for losses in school lands which were granted to the State . . . but title to which never passed to the State because the lands had been sold or otherwise disposed of before the State was admitted to the Union or because of other reasons . . . . Consequently, the base land assigned by the State in its application is not land now owned by the State which will pass into Federal ownership upon approval of the State's application. There is no requirement in the statutes authorizing indemnity selections, or in the Department's regulations on such selections, that the base lands shall be equivalent in value to the selected lands. . . ."

This position in the ordinary type of state selection was affirmed again in 1956. M. 36331.

When the state lieu selection statutes were last amended in 1958, it was clear that Congress recognized the practice by the states of offering as base for indemnity selection lands of little value for lands of greater value because of the equal acreage (rather than equal value) provisions of that law. As this Department stated in its letter to the Chairman, House Committee on Interior and Insular Affairs, which was adopted by the Com-

mittee in its report accompanying S. 2317 (the 1958 amendment), H.R. 2347 85th Cong., 2d Sess., p. 4.

> In giving a State selections in place it was intended that a State would acquire a proportionate part of all classes of land within its boundaries, and the authorization to make selections on the basis of *equal acreage rather than equal value* carries this policy forward. (Emphasis added.)

Accordingly, it is clear that the 1958 amendments to the state indemnity selection laws not only reaffirmed the position of this Department that discrepancies in values between offered and selected lands was not to be considered, but also intended the equal acreage rather than equal value test be carried forward in the case of mineral lands. Therefore, the mere fact that the mineral value of the selected lands far exceeds that of the offered lands may not operate as a bar to the selection.

THOMAS J. CAVANAUGH
Associate Solicitor
for Public Lands

APPENDIX G

IN REPLY REFER TO:
722 (2222)

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

Memorandum Dec 15, 1966

To: Secretary of the Interior
Through: Assistant Secretary,
Public Land Management

From: Director, Bureau of Land Management

Subject: State Indemnity Selections—Cane Creek
Potash Deposits

The selection of the Cane Creek Potash deposits by the State of Utah in satisfaction of its school land grant raised certain questions including:

1. The policy of Congress with respect to the selection of deposits of "hard-rock" leasable minerals, and

2. The policy of Congress with respect to equality of value between the selected and the lost lands.

The Attorney General in his opinion of February 7, 1963, pointed out that the question of availability of particular lands for State indemnity selections was a matter within the discretionary authority of the Secretary granted by section 7 of the Taylor Grazing Act.

To give the Congress the opportunity to express itself clearly on these questions, the Secretary sent forward an executive communication which was introduced as H.R. 16, 89th Congress. If enacted, H.R. 16 would have established the rule that selections of lands valuable for leasable minerals could be approved only if the lost lands used as base for the selections were equal in value. The

House Committee on Interior and Insular Affairs tabled the bill. Thus the Congress did not express itself on the matter.

In its testimony before the House Committee, the Department urged enactment of H.R. 16. The House passed instead H.R. 5984. This bill consisted of two of the features of H.R. 16, both of which were additional benefits to the States. In its testimony before the Senate Committee, the Department restated its preference for the equal-value legislation and indicated its lack of objection to the features of S. 1883 and its companion H.R. 5984. It stated further that, if Congress did not express itself on the larger questions, the Department would exercise its existing authority to "*Control the selection of high value* mineral lands through the classification process, to the extent it is able to do so."

After H.R. 5984 was enrolled, it was signed into law only after the Department assured the Executive Office that through classification and withdrawal procedures it would prevent State indemnity applications ". . . that involve grossly disparate values. . . ."

Normal channels of administrative review will be available to settle questions of disparity of values which may arise in connection with applications for selection presented to the Bureau of Land Management. This process will be facilitated, however, if the Bureau has guidelines for its use in considering individual applications. We recommend the following guidelines for our use:

1. An estimate will be made of the present value of the "selected land" in its present condition and of the present value of the "base land" in its "native condition." The term "native condition" means that if the resources of the "base land" have been diminished by mining, harvesting, etc., the estimate will assume that the original resources are intact. It also means that if the value of the "base land" has been increased by improvements or by Government developments, the estimate will not include the value so added. If the "base" results from fractional selections or townships, the estimate will be based on

the average value of lands in the general vicinity of the loss. The value of the "base land" will not be estimated if the estimated value of the "selected lands" is $100 per acre or less.

2. If the estimated value of the "selected lands" is more than $100 per acre, then the values will not be considered grossly disparate if the value of the "selected lands" exceeds the value of the "base lands" by less than $100 per acre or by 25% of the value of the "base land", whichever is greater. [If such estimate exceeds these limits, the case will be submitted to Washington for evaluation of all the circumstances.[1]]

3. The above estimates will be made for all applications for selection to the extent the applied-for lands are subject to classification. Whether or not values are grossly disparate under the above rules, any denial of the petition for classification will include all reasons for denial of the petition.

Your approval of this memorandum will constitute your approval of the suggested guidelines.

/s/ Boyd L. Rasmussen
BOYD L. RASMUSSEN

Approved: Jan. 18, 1967

/s/ Stewart L. Udall
Secretary of the Interior

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[1] The bracketed sentence does not appear in the copy of this memorandum which was made part of the record in this case. However, it does appear in the memorandum officially retained in Interior Department files.

APPENDIX K

General File Copy No. 2222

REPORT OF MEETING WITH UTAH DIVISION OF STATE LANDS

Attendance:
R. D. Nielson

Charles R. Hansen (Utah)
Mark Crystal, Div. State Lands

Gail Prince, Div. of State Lands
Jim Keogh, Staff, USO

Date—12/19/68

Place—Utah State Director's Office

Time—10:30 a.m.

State Director Nielson opened meeting stating that BLM would like to satisfy the State of Utah's outstanding indemnity selection entitlement (234,466 acres) as early as possible. He referred to our suggestion presented to the Land Board earlier this calendar year.

Hansen said the State Land Board prefers that BLM proceed with action on the State's pending applications (142,247 acres) on a one at a time basis as the program has proceeded in the past. He said the board did not favor a plan for satisfying total entitlement at this time.

Nielson outlined status of pending selection applications as follows:

1. *Oil Shale Selections*—That the Washington office authorized him to negotiate with the State to develop for consideration of the Secretary a mutually agreeable proposal between the State and BLM in the Uintah Basin area with a view of satisfying the State's entire entitlement in that area. (Further reference to proposal is made later in this report)

2. *Alton coal selections*—mineral report prepared and will be submitted to Washington shortly recommending

that selection applications be approved except for lands classified by USGS as being within producing or producible mineral leases. Decision on those lands classified as being within producing leases, will be issued this week.

3. *Kaiparowits coal selections*—mineral report still in process, but said we would not likely recommend transfer of the lands involved.

4. *Carbon County coal selections*—USGS report showed most of lands applied for were within producing or producible mineral leases. Decision as to such lands will be issued this week.

5. *North slope-Phil Pico phosphate selections*—10,484 acres transferred to State by Clear List No. IL 307 dated December 6, 1968.

6. *Seven Mile potash selections*—mineral report in process. It was noted that lands along the eastern edge of the selection area may be included in a proposed extension to Arches National Monument.

7. *Jensen selection area*—BLM is waiting for response from State on BLM suggested adjustment dated June 20, 1967 in area to be selected so as to conform selection to management unit.

8. *Salt Lake Valley selection*—Salt Lake County protested selection of this 2.2 acre tract on Jordan River. County asked for 30 day period to see if they could work matter out with State. Hansen said his Division was processing application on behalf of University of Utah and has referred county representative to university officials.

From a map of the Uintah Basin oil shale area prepared by BLM showing various management units, considerable discussion of a number of proposals referred to in item 1 (above) of this report took place. As a result, the Director of State Division of Lands agreed to discuss with the Land Board the possibility of the State selecting an area of approximately 120,000 acres[1] (areas in A2, A3, B3, and D on map of Uintah Basin area prepared 10/29/68) in two blocks: Block 1:

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[1] Note: this is in addition to the 48,500 acres in pending selection applications.

Bounded on north by White River, on west by Two Water Creek, or Bitter Creek on east by Colorado-Utah boundary and on south by south boundary of T. 12 S., R.'s 23-25 E. (A2, B3, and D) and Block Two: an area adjoining State owned lands in the Book Cliff Mountains in Tps. 15-19 S., R.'s 20-24 E. (Area A3).

State Director Nielson pointed out that this proposal for blocking state selections in the Bitter Creek-White River area is being considered as a compromise approach to satisfying state selections. If this proposal is approved it will allow transfer of some of the highest grade oil shale lands in the state and the state would no longer pursue further selections in the oil shale area.

Nielson further expressed that BLM will also consider this as a compromising proposal in lieu of allowing selections in the Kaiparowits coal reserve in the middle of the Kaiparowits Plateau where BLM lands are predominate.

Nielson pointed out that by allowing this preferred selection the state should then recognize some obligation in satisfying its remaining outstanding selection rights in other areas that would tend to block state lands without serious interference of important public land management programs, such as was suggested in the bureau's proposal to the State Land Board earlier this calendar year.

Nielson made it clear that the proposal for allowing the oil shale land selection was not a commitment on the part of BLM or the Secretary, and that he would like a response from the State Land Board before discussing such a proposal with his Washington Office. Hansen said that while the Board just met and would not be meeting for some time, he would try to discuss the proposal with them by telephone and let Nielson know of their reaction within a couple of weeks.

Hansen asked about status of State exchange in southeast San Juan County and if highway right of way application through selection area had been filed. It was reported that the field work has been done, appraisal report was in preparation, and that the right of way application had been filed. Nielson said we would meet

with State Division of Lands when our reports are completed.

Nielson reported that completion of our appraisal report was expected this week in connection with State exchange application involving acquisition by BLM of State lands in the Sand Dunes recreational area and the State's acquisition of Federal lands to assist Brush Beryilium expansion.

Nielson closed the meeting by saying that BLM would like to move aggressively in an exchange program of blocking up State and Federal holdings in management units.

Meeting adjourned at 11:30 a.m. No new date set for another meeting.

/s/ J. E. Keogh

cc Wash. attn code 720.

APPENDIX L

Central Files Copy Nos. 2620 2222

STATE OFFICE

Post Office Box No. 11505
Salt Lake City, Utah 84111

May 9, 1969

Memorandum

To: Director

From: State Director, Utah

Subject: State Indemnity Selections—Utah

Among the important matters I expect to discuss with your staff in my forthcoming visit to Washington is a tentative proposal worked out by mutual agreement with the Utah State Division of Lands for satisfying in total the State's outstanding indemnity selection entitlement of 233,186 acres under the Act of February 28, 1891, as amended.

The essential elements of the tentative proposal are as follows and the areas referred to are shown on Exhibits 1 and 2 transmitted under separate cover in map tube #1, Attn. Code 302.

1. Transfer in a management unit (see Tract 1, Exhibit 2) to the State approximately 149,792 acres of valuable oil shale lands in the Uintah Basin of eastern Utah—48,042 acres within the management unit are already included in pending selection applications.

2. Block-up extensive State land holdings in the Bookcliff Mountains (see Tract 2, Exhibit 2) in the Uintah Basin in eastern Utah by transfer of approximately 35,244 acres of bituminous sand and low-grade oil shale lands.

3. Deny pending selection applications covering 20,450 acres of valuable coal lands in the Kaiparowits Plateau (see Exhibit 1) in southern Utah, and also deny pending applications covering 9,720 acres of valuable oil shale lands lying outside the management unit referred to in item 1 above.

4. Approve, subject to minor adjustments for conformance to management units, pending indemnity selection applications covering approximately 37,000 acres distributed in 12 different sites over the State (see Exhibit 1). Of these pending selections, only one has significant mineral values; this is the Seven Mile potash selection (19,417 acres) lying a few miles north of the Cane Creek potash area near Moab, Utah.

5. The State of Utah would recognize its obligation to complete promptly its indemnity selection program by satisfying its remaining entitlement (estimated to be about 12,500 acres) in blocks that would tend to consolidate State lands within areas suggested to the Division of State Lands back on January 24, 1968. (See overlay with Exhibit 1.)

6. There are 38,100 acres of KGS lands within the proposed oil shale selection areas, and transfers of such public lands will be subject to the reservation to the United States of oil and gas deposits.

In a meeting of December 19, 1968 with Charles R. Hansen, Director of the Utah State Division of Lands, in which the tentative proposal was worked out, I made it clear to Mr. Hansen that the proposal was a tentative one and was in no way a commitment on the part of BLM or the Secretary. In fact, Mr. Hansen had first to get a response from the State Land Board before he could give us the OK to discuss it in Washington. His verbal OK has been received.

These outstanding selection rights have been a most perplexing problem to us despite the considerable accomplishments we have achieved in reducing their outstanding entitlement by 329,213 acres since 1960 compared to its reduction by only 26,878 acres in the preceding decade.

It is the announced policy of the State of Utah to select their entitlement from public lands having the highest value for revenue producing purposes, particularly high value mineral lands. Hr. Hansen stated frankly in one (May 29, 1968) of our periodic meetings to discuss programs having mutual interest to our respective agencies, that the State doesn't have the funds or staff to undertake management responsibilities on State lands.

The State has followed the policy of distributing their selections on a piecemeal basis among a large number of sites (see Exhibit 1) with little or no regard to filing selections in management units, and often filing them only to accommodate a private interest. In fact, prior to this time, the State did not favor a plan for satisfying their total entitlement.

The State is absolutely opposed to what they regard as continued efforts—even after legislation introduced in 1965 (H.R. 16) failed to get Congressional approval—of BLM and the Department to impose the concept of equal value in base and selected lands. Consistent with their announced policy the State selects public lands many times more valuable than that of the base lands. Since most of their selections are for high value mineral lands, a major factor contributing to the continuance of this situation is the lack of a mineral classification category with respect to solid leasable minerals (i.e., oil shale, coal, potash, phosphate, etc.) comparable to the KGS (known geologic structure) classification category applicable to oil and gas fields.

It is important that the State's outstanding indemnity selection entitlement be satisfied as soon as possible. Important Bureau resource development programs requiring land tenure adjustments involving extensive acreages of State school lands scattered among vast areas where public ownership predominates are being hampered because the State is not interested in developing a viable exchange program with BLM until the indemnity selection program is resolved.

The piecemeal manner in which we have had to attack the problem with its constant rejections and adjustments

of applications has added immeasurably to our workload, and has not tended to improve our relations with the State and with the Utah Congressional interests who are either not sympathetic to our position, or who do not understand it.

The key to the tentative proposal is centered around the selection of approximately 125,000 acres of valuable oil shale lands in Tract 1 on Exhibit 2, and discussed in the attached report of mineral values dated May 9. As stated in that report, Tract 1 encompasses about one-half of the total oil shale deposits in Utah thought to have possibilities for commercial development, and about one-fourth of the richest deposits in Utah. It represents the important consideration of whether or not valuable oil shale lands should be transferred out of Federal ownership.

Since the indicated value estimates of the oil shale lands range from $175 to $900 per acre, value considerations of the base and selected lands are involved, inasmuch as the average value of the lands available for use by the State of Utah as base for the selection is likely to range from $5 to $25 per acre.

The oil shale area designated in the tentative selection proposal was carefully delineated to provide a suitable block of land for management of the mineral as well as surface resources. Natural features, accessibility and land ownership of them were utilized to the extent possible in determining the boundaries of the tract. No critical management problems are foreseen if the selection of the tract occurs.

Presently, livestock grazing is the main use being made of surface resources. About 16,833 AUM's of livestock forage are used annually from the area. This is mostly winter grazing by sheep. The area is used by the north Book Cliffs deer herd as a winter range. However, the area is not considered to be a critical or key deer winter range. Also, a few deer hang along the White River bottoms year-long.

Recreation use is not great. The recreation use that does occur is mostly in the form of deer, rabbit and chukar hunting. Also, there is some driving for pleasure, rockhounding, etc. We estimate 5,000 annual visitor-days use on the area.

The land is generally quite erodable, but no watershed improvement projects have been programmed for the near future. There are some forest products harvested from the area. About half the land is forested with pinon-juniper. These trees are small and poorly formed at the lower elevations but well formed at higher elevations near the south edge of the selected area. Firewood is the most important forest product. There are also some posts and Christmas trees cut from the area.

BLM investments within the area are estimated as follows:

	Improvement Cost
Corral (one)	$ 750
Stock reservoirs (17 @ $200 ea.	3,400
Fence (46.5 mi. @ $1,000/mi.)	46,500
Water wells converted from gas wells (2 @ no cost to BLM)	
Water well (1 @ $2,000)	2,000
Total	$52,650

In short we think the tentative proposal has merit, and I am looking forward to discussing it with your staff.

/s/ R.D.N.

Attachments:

1. Report
2. Maps w/ overlays (sent under separate cover)

JEKeogh:vh

APPENDIX M

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Jul. 1, 1971

Honorable Russell E. Train
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Chiarman:

On September 1, 1970, we submitted a report under section 103 of the National Environmental Policy Act. This letter is intended to supplement that report insofar as it pertains to the agency jurisdiction of the Bureau of Land Management (BLM).

Since 1934 private entry on lands within the continental United States may be made only after classification under the Taylor Grazing Act (43 U.S.C. § 315 *et seq.*) Were it determined in advance that use of the land would be inconsistent with environmental considerations, the BLM would adversely classify the land and reject the application. However, once entry is allowed, environmental considerations cannot constitute a basis for cancellation of the entry or refusal to issue a patent. Once a patent is issued under the homestead laws (43 U.S.C. § 161 *et seq.*), or the Small Tract Act (43 U.S.C. § 682a), all jurisdiction of this Department terminates. This Department has recommended repeal of most of the archaic land laws; we advocate a general sales act with built-in environmental safeguards.

The BLM has no environmental control over mandatory land disposals. In this category fall grants to the several States for school purposes, university grants and grants in other general purposes made by the various Statehood Acts. Particularly noteworthy is the immense grant made to the State of Alaska by section 6 of the Statehood Act of July 7, 1958, 72 Stat. 339. Other disposals of this type are the *in praesenti* grant of the Swamplands

Act (43 U.S.C. § 980 *et seq.*), the mandatory state exchange provision of section 7 [*sic*: 8?] of the Taylor Grazing Act (43 U.S.C. §315g), as well as the many special grants made to various cities, States and individuals by numerous special and private statutes. In the majority of cases involving special grants BLM is merely a record keeping agency for the convenience and may not impose any terms, stipulations, or conditions. Another mandatory type of disposal is that which arises under the provisions of R.S. 2477 (43 U.S.C. § 932). Under this grant, any State or local political subdivision may locate roads on unwithdrawn public lands without BLM consent. Legislation would be necessary in order to consider environmental factors in connection with grants of this type.

The so-called location and settlement laws leave BLM without authority to consider environmental factors in their administration. In Alaska particularly, the homestead settlement laws (48 U.S.C. § 371 *et seq.*), the native allomtent law (48 U.S.C. § 357), and the purchases authorized for headquarters, trade and manufacturing or homesites (48 U.S.C. § 461) permit entry without prior approval of the BLM. A similar situation arises throughout the United States under the mining laws (30 U.S.C. § 21 *et seq.*). The Department has no control over entries made pursuant to these laws and the basic statutes under which the entries are made do not admit of environmental considerations. New legislation is required, and the Department has consistently recommended such legislation.

Although the Department has authority to impose adequate protection of the environment on any leases or permits, granted in the future; e.g., mineral leases under the Mineral Leasing Act of 1920, as amended (30 U.S.C. §§ 181-287), or the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331-1343), it has limited authority to impose additional environmental requirements on existing leases or permits.

Sincerely yours,

/s/ Raymond C. Coulter
RAYMOND C. COULTER
Deputy Solicitor

APPENDIX N

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

Washington, D.C. 20240

May 23, 1972

Dear Governor Rampton:

Pursuant to the agreement reached between your representative, Mr. Charles Hansen, Director of the Division of State Lands of the State of Utah, and the representatives of this Department, I am herewith providing you with the following information and assurances.

The opinion of the Attorney General has been requested concerning the filings for selection of mineral lands by the State of Utah. The Attorney General has been asked whether there is any legal barrier to the approval of the filed selections of the State of Utah and at what point in time the rights of the State vest, i.e., at the time of filing for selection or at the time of approval of such selections.

This Department agrees not to undertake any classification of the lands in question until after the opinion of the Attorney General has been received. Therefore, the Geological Survey will not classify any mineral deposits in the lands as "producing or producible," nor will I classify the lands as to their suitability for State selection.

In view of the fact that the terms of the selection statute, 43 U.S.C. § 852 (1970), expressly dictates the division of any proceeds from any outstanding mineral leases on the lands at the time of State selection, there is no need for any agreement between the State of Utah and the United States on this subject. In dividing the proceeds of outstanding mineral leases, this Department will follow the opinion of the Attorney General as to that point in time when the rights of the State vest in the selected lands. If the Attorney General finds that there is no

legal barrier to the approval of the State selection, then this Department will initiate the administrative steps necessary to accomplish that approval.

With this information and assurances at your disposal, will you withdraw any objection to the proposed leasing of two tracts of land in Utah for oil shale development?

Sincerely yours,

/s/ Rog
Secretary of the Interior

Honorable Calvin L. Rampton
Governor of Utah
Utah State Capitol
Salt Lake City, Utah 84114

cc: Mr. Charles Hansen, Director
Division of State Lands
State of Utah

APPENDIX O

January 24, 1974

The Honorable Rogers C. B. Morton
Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

As you are aware, I have asked the Attorney General of Utah to commence legal action to compel the Department of the Interior to grant the State of Utah certain public lands which we are seeking under our original state selection rights. There is one matter which I believe should be taken care of by negotiation between the State of Utah and your Department at the time or immediately after the action is filed.

You have announced that on March 5, 1974 and April 2, 1974 two tracts of oil shale bearing land in the State of Utah will be offered for bid on a lease basis to interested oil companies for the purpose of an oil shale extraction operation. These two tracts are within the area sought by the State of Utah under the selection rights which are a subject of the proposed law suit. I do not wish to interfere with the letting of these leases under the proposed bidding procedure.

Shortly before the announcement was made that these tracts would be let for bid your office asked me to furnish you with a statement to the effect that the pendency of our selection application would not be construed as a cloud on the title of these tracts and that the State of Utah would recognize the right of the lessee under any lease granted on these tracts by the U.S. Government. I did furnish you with such a letter. I would like to have that understanding continued as a stipulation in the law suit. Therefore, as quickly as the suit is filed and you are served, the State of Utah will be prepared to enter into a stipulation consenting to the leasing of these two tracts by the U.S. Government and recognizing the rights of any lessors under such lease.

Sincerely,

Governor

CLR:b

APPENDIX P

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

Washington, D.C. 20240

February 14, 1974

Dear Governor Rampton:

This is in response to your letter of January 24, 1974, regarding applications filed by the State of Utah to select certain public lands in Uintah County pursuant to the indemnity selection provisions of Sections 2275 and 2276 of the Revised Statutes, as amended, 43 U.S.C. § 851, *et seq.* (1972).

As you know, the Department of the Interior has not as yet acted upon the State's applications. The principal question presented by the applications is whether pursuant to Section 7 of the Taylor Grazing Act, 48 Stat. 1272 (1934), as amended, 43 U.S.C. § 315f (1972), the Department may refuse to convey applied-for lands to a State where the value of those lands greatly exceeds the value of the lost school lands for which the State seeks indemnity. In January 1967, the then Secretary of the Interior adopted the policy that in the exercise of his discretion under, *inter alia*, Section 7 of the Taylor Grazing Act, he would refuse to approve indemnity applications that involve grossly disparate values. That policy remains in effect.

In the present case, although the land values are not precisely determined, it appears that the selections involve lands of grossly disparate values, within the meaning of the Department's policy. While the Department is not yet prepared to adjudicate the State's applications, I feel it is appropriate at this time to advise you that we will apply the above mentioned policy in that adjudication. We have examined the legal arguments set forth by the Attorney General of the State in his letter

to me of January 16, 1974, and have found nothing therein to cause us to alter our legal position.

As you are aware, we contacted the Attorney General of the State of Utah to discuss the possibility of agreement on a stipulation along the lines you have suggested should litigation ensue. We have also brought your letter to the attention of the Department of Justice.

Your suggested stipulation is most constructive and desirable. We shall be happy to enter into such an agreement and thereafter to state in the public notice issued in connection with the leasing that such an agreement has been reached.

Sincerely yours,

/s/ Rog Morton

Secretary of the Interior

Honorable Calvin L. Rampton
Governor of Utah
Salt Lake City, Utah 84114

APPENDIX Q

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

February 15, 1974

Honorable Vernon B. Romney
Attorney General
State Capitol Building
Salt Lake City, Utah 84114

Dear Mr. Romney:

This is in further response to your letter of January 16, 1974.

We have analyzed your legal arguments and, while we respect your views, find that we cannot agree with them. We believe that the "comparative value" criterion is a valid one with respect to classifying lands for State lieu selection; such classification being authorized by Section 7 of the Taylor Grazing Act, 48 Stat. 1272, 43 U.S.C. § 315f (1972). Accordingly, we intend to apply that criterion when we adjudicate the pending State applications.

For your information, I am enclosing a copy of a letter which the Secretary has sent to Governor Rampton.

Sincerely yours,

/s/ Kent Frizzell
Solicitor

Enclosure

APPENDIX R

AGREEMENT FOR THE LEASING OF OIL SHALE WITHIN TRACT U-a AND TRACT U-b IN THE SOUTH OF UTAH

THIS AGREEMENT, made and entered into as of the 22nd day of February, 1974, by and between the UNITED STATES OF AMERICA, through the Secretary of the Interior and the STATE OF UTAH, through the Governor and the Division of State Lands of the State of Utah.

WHEREAS, the United States Department of the Interior, Bureau of Land Management, has announced that Utah TRACT U-a and TRACT U-b will be offered on March 12, 1974 and April 9, 1974, respectively, for oil shale lease by sealed bids to the qualified bidder submitting the highest amount per acre as bonus for the privilege of leasing the lands in accordance with the provisions of the Mineral Leasing Act of February 25, 1920; and,

WHEREAS, the lands included in TRACT U-a aggregate 5,120.00 acres and are described as:

T. 10 S., R. 24 E., SLB&M,
Sec. 19, E ½;
Secs. 20, 21, 22, 27, 28 and 29, all;
Sec. 30, E ½;
Sec. 33, N ½;
Sec. 34, N ½; and,

WHEREAS, the lands included in TRACT U-b aggregate 5,120.00 acres and are described as:

T. 10 S., R. 24 E., SLB&M,
Sec. 12, S ½, S ½ N ½;
Secs. 13, 14, 23 and 24, all;
Sec. 25, W ½ W ½;
Sec. 26, all.

T. 10 S., R. 25 E., SLB&M,
Secs. 18 and 19, all; and,

WHEREAS, the State of Utah has filed applications under R.S. 2275 and 2276 as amended (43 U.S.C. 851-852) with the Secretary of the Interior for transfer to the State of Utah of the lands contained in TRACTS U-a and U-b; and,

WHEREAS, the United States and the State of Utah desire that the lease sales by the Department of the Interior on March 12, 1974 and April 9, 1974, under the terms and conditions previously announced by that Department should proceed;

NOW, THEREFORE: It is agreed by and between the United States of America and the State of Utah:

1) That the Department of the Interior may proceed with the lease offers scheduled for March 12, 1974 and April 9, 1974, under the terms and conditions contained in the notice of that offer published in the Federal Register of November 30, 1973, (38 F.R. 33187); and,

2) That if, as the result of the bonus bids received pursuant to those offers, the Secretary of the Interior should determine that oil shale leases should be issued then the Secretary in his sole discretion may issue the leases; and,

3) That if, as the result of action by the Secretary, or by a court order or decree, or otherwise, the State of Utah is or becomes vested with any right or interest in the lands or minerals contained within those TRACTS, the State of Utah will be bound by and fully honor all of the terms and conditions of any lease or leases issued as a result of the March 12, 1974 and April 9, 1974 lease offerings, as fully as the United States of America as lessor will be bound by said leases.

4) That the State of Utah claims that it is entitled not only to the lands herein identified, but that it is also entitled to all lease rentals and bonus funds which the Secretary may receive from the successful bidders, if any. The United States denies the validity of such claims. The State of Utah intends to file a lawsuit within the near future to obtain judicial enforcement of the rights which it claims to have. The execution of this agreement in no way recognizes, validates, waives, releases or

in any way affects the legal rights, claims or respective positions of the parties hereto.

IN WITNESS WHEREOF, the United States of America, acting by and through the Secretary of the Interior, and the State of Utah, acting by and through the Governor and the Division of State Lands of the State of Utah, have executed the foregoing instrument.

THE UNITED STATES OF AMERICA

/s/ Rogers C. B. Morton
Secretary of the Interior

THE STATE OF UTAH

/s/ Calvin L. Rampton
Governor of the State of Utah

/s/ Charles R. Hansen
CHARLES R. HANSEN, Director
Division of State Lands

APPENDIX T

IN REPLY REFER TO:
2620 (322)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

March 21, 1974

Instruction Memorandum No. 74-106
Expires 12/31/74
To: SD's, SCD
From: Director
Subject: State Indemnity Selections

Enclosed is a copy of the letter of February 14 from the Secretary of the Interior to Governor Calvin L. Rampton of Utah.

This letter to Governor Rampton is a restatement of the policy adopted by the Department in 1967 that, ". . . in the exercise of his discretion, under, *inter alia*, Section 7 of the Taylor Grazing Act, he [the Secretary] would refuse to approve indemnity applications that involve grossly disparate values." See the enclosed copy of the memorandum approved on January 18, 1967, by the Secretary.

The February 14 letter by Secretary Morton announces the Department's policy in clear and succinct language. Accordingly, in your adjudication of any pending or future indemnity applications, be sure to give full consideration to the values of the "lost" lands and those selected as indemnity therefor, to the end that we do not approve or recommend for approval any selection in which there is gross disparity of values by the selection of "high-value" lands for "low-value" base lands lost to the State.

This policy will be incorporated in the Manual at the first opportunity.

/s/ Ernest Berklund

2 Enclosures

Encl. 1—Copy of ltr dtd 2/14/74 to Gov. Rampton

Encl. 2—Copy of memo approved Jan. 18, 1967

APPENDIX U

IN REPLY REFER TO:

2620 (322)

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

May 13, 1974

Instruction Memorandum No. 74-106, Change 1

Expires: 12/31/74

To: SD's, SCD

From: Associate Director

Subject: State Indemnity Selections

On March 27, 1974, we were notified that the State of Utah had filed a complaint against the Secretary of the Interior, entitled *The State of Utah* v. *Rogers C. B. Morton individually and as Secretary of the Department of the Interior*, USDC-Utah, C-74-64. This complaint is based upon State indemnity selection applications filed by the State of Utah to select approximately 157,200 acres. The State alleges that this Department has unduly delayed in approving these selections.

Instruction Memorandum No. 74-106 of March 21, enclosed the Secretary's letter to Governor Rampton of Utah which clarified the Department's policy that it would refuse to approve indemnity applications that involve grossly disparate values between the selected lands and the "lost" lands, where the value of the applied-for lands greatly exceeds the value of the lost school lands for which the State seeks indemnity.

If you have cases now pending where the situation described prevails, as in the State of Utah cases, as a matter of Departmental policy you are to suspend them immediately pending final determination by the courts in the Utah suit. No action should be taken which would

in any way commit this Department until the final court decision has been issued. Thereafter, appropriate instructions will be issued in accord with the terms of the court decisions.

The question has also been asked as to how to treat applications by the State wherein the value of the State base land greatly exceeds the value of the applied-for land:

1. If the State is willing to proceed under this type of situation, the application may be processed and the State may amend its filing in order to select lands of more comparable value.
2. We cannot apply high-value "trade-offs" from State base land in one application to low-value base land in another application.

/s/ George L. Turcott

APPENDIX V

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

Honorable Frank E. Moss
United States Senate
Washington, D.C. 20510

Dear Senator Moss:

This is in reply to your letter of January 29, 1974, to Secretary Morton regarding the applicability of the National Environmental Policy Act to lieu selections of the State of Utah.

You referred to the letter of July 1, 1971, which the then Deputy Solicitor sent to the Chairman of the Council on Environmental Quality. In that letter it was stated that the Bureau of Land Management is unable to impose environmental controls in connection with disposals of public lands which are mandatory by statute. Among the examples of such mandatory disposal statutes cited by the Deputy Solicitor were the grants to the several States for school purposes. Although the Deputy Solicitor did not cite any particular statutes, his reference was to the *in praesenti* land grants for school purposes made by the Congress in the several Statehood and Enabling acts. In other words, he was referring to the original grants of numbered school sections in place (i.e., sections 2, 16, 32 and 36). There is no question regarding the mandatory nature of such grants.

On the other hand, the Deputy Solicitor made no reference to indemnity (or lieu) selections for lost school lands, and did not intend to refer to such selections, since they are discretionary rather than mandatory. The States have no rights to any public lands merely because they have been applied for as indemnity lands and the Secretary has ample authority to reject such lieu selec-

tions if they do not meet the requirements of the lieu slection statutes. Moreover, under Section 7 of the Taylor Grazing Act, 48 Stat. 1272 (1934), as amended, 43 U.S.C. § 315f (1972), it is expressly provided that applied-for public lands must be classified as suitable for lieu selection before an application for such selection may be approved. Hence, the law provides that the approval of State lieu selections is discretionary, not mandatory. That being so, the decision-making process is involved and the requirements of the National Environmental Policy Act are applicable.

Accordingly, the action of this Department in preparing an environmental impact statement with respect to the pending applications of the State of Utah is neither arbitrary nor capricious, but on the contrary constitutes compliance with the legislative mandate of the Congress.

The Department shares your desire that the State of Utah's pending lieu selection applications can be resolved in the near future, and we are making every effort to do so.

Sincerely yours,

/s/ Kent Frizzell
Solicitor

AFFIDAVIT OF DONALD G. PRINCE

[Filed Sept. 15, 1975]

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

DONALD G. PRINCE, first being duly sworn upon oath, deposes and says that he is the Assistant Director of the Division of State Lands of the State of Utah; that this Affidavit is made to supplement the earlier affidavit of Charles R. Hansen, as duly executed the 18th day of August, 1975, and filed with the Court; that a copy of a memorandum dated February 11, 1943, from the Commissioner of the General Land Office of the Department of the Interior to the Secretary of the Interior, concerning selections of lieu lands as indemnity for lost school lands, is attached to this Affidavit, both as a photo-copy (barely legible) of the original memorandum and as a legible re-typed copy of said memorandum; that said document is, to the best of my knowledge, information and belief, a true and correct copy of the original thereof; that said document is expressly incorporated herein and by this reference is made a part of this Affidavit.

Dated this 15th day of September, 1975.

/s/ Donald G. Prince
DONALD G. PRINCE

SUBSCRIBED AND SWORN to before me this 15th day of September, 1975.

/s/ Stanley Green
Notary Public, Residing in
Salt Lake City, Utah

My Commission Expires: Mar. 22, 1977

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
Washington

IN REPLY REFER TO:
Phoenix 080399 "A"

MEMORANDUM for the Secretary,

Reference is made to the Solicitor's opinion of October 26, 1942 (M. 31956), approved by the Assistant Secretary November 3, 1942, concerning the authority of the Secretary of the Interior and the degree of discretion he is authorized to exercise in the matter of State exchanges under the provisions of Section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g).

It is the Solicitor's opinion that the Taylor Grazing Act grants to the Secretary the authority to determine the basis to be used in effectuating the exchanges under the act, and that it is also within the authority of the Secretary to determine the basis (equal value or equal acreage) for exchanges with States. In conclusion, the Solicitor expressed his belief that the regulations (43 CFR 147.2, 147.4, 147.6, and 147.8) should be altered in this respect to reflect the Secretary's authority to consider relative land values in connection with all State exchanges under the Taylor Grazing Act, whether based on equal value or equal acreage as the foundation for a determination by him of the proper basis for the exchange.

Before proceeding with the suggested revision of the regulations, I would like to submit for consideration comments on some aspects of this matter and on the possible effect the proposed revision of the regulations will have.

Section 8 of the original Taylor Grazing Act of June 28, 1934, supra, authorized the issuance of patent "for not to exceed an equal value of surveyed grazing district land, or of unreserved surveyed public land" in exchange

for any privately-owned lands within a grazing district; and provided that "Upon application of any State to exchange lands within or without the boundaries of a grazing district, the Secretary of the Interior is authorized and directed, in the manner provided for the exchange of privately-owned lands in this section, to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end * * *."

The desire for amendments to the Act were manifested almost immediately upon its approval. Among the amendments proposed and incorporated in H.R. 3019, 74th Congress, which passed the House and Senate, was a provision making mandatory the exchange of State-owned lands for public lands of equal value regardless of whether such exchanges were in the public interest, or whether they were within or outside of established grazing districts. Another provision made an outright grant to the States of the public lands that remained isolated for two years.

The combination of this mandatory requirement as to exchanges with the outright gift of the isolated tracts would make possible an interpretation that might eventually, through manipulating the exchanges, result in practically all of the remaining public lands passing into State ownership. For this and other reasons the President vetoed the bill, with the suggestion that at another session of Congress the matter could be reconsidered and more suitable legislation passed.

The subsequent amendment of the Taylor Grazing Act, approved June 26, 1936, undoubtedly represents a compromise of many divergent schools of thought and probably was the most satisfactory common ground upon which all conflicting forces could be reconciled. It received the favorable endorsement of this Department.

The regulations governing State exchanges which were issued under Circular 1398 provided that the States "should state whether the proposed exchanges are to be based upon equal values or equal areas." However, practically all of such exchanges for the past five years or more, on the States' election, have been on the basis of

equal area. Furthermore, all of the State indemnity selections are, under existing statutes, on the basis of equal area. A promulgation of a different rule for State exchanges under the Taylor Grazing Act, through the proposed modification of existing regulations as to such exchanges, would be of little avail as the selected land in any rejected State exchange application might easily upon the classification of the land under amended Section 7 of the Grazing Act be secured by the State through an indemnity selection. Then, too, it might create such a disturbance and confusion as would result in a demand for a further amendment of the Taylor Grazing Act, reopening the whole subject, and a possible revival of the previous attitude on the part of the States reflected in H.R. 3019, the Secretary's memorandum to the President of August 26, 1935, and the President's veto message of September 5, 1935.

A legal phase of the problem not touched upon by the Solicitor, but which has far-reaching effect upon the change of procedure proposed, involves the third paragraph of Section 8(c) of the Taylor Grazing Act, as amended, reading as follows:

> "For the purpose of effecting exchanges based on lands of equal acreage, the identification and area of reserved school sections may be determined by protraction, or otherwise. The selection by the State of lands in lieu of any such protracted school sections shall be a waiver of all of its right to such sections."

The protraction of unsurveyed base lands is not new; it was provided for in the act of February 28, 1891 (26 Stat. 796; 43 U.S.C. 852, 852), amending Secs. 2275 and 2276 U.S.R.S., for indemnity school land selections, which act with the regulations thereunder (39 L.D. 39 CFR 270.1-270.16), embodies the governing provisions for the adjudication of such selections. Those selections have been based upon equal areas, regardless of the value of the base or selected lands. *California* v. *Desert Water Etc. Company*, 243 U.S. 415; *Wyoming* v. *United States*, 255 U.S. 489. In this connection attention is invited to the early instructions of the Treasury Department of

July 11, 1805, to the registers of the Ohio land districts, wherein it was directed that where a fractional section 16 had been disposed of by the United States, it would be necessary in order to replace it to select a tract containing "as near as possible" "a quantity of land equal to the sold fraction." Laws, Instructions, and Opinions, Public Lands, Volume II, page 259. However, the base for an indemnity selection is sometimes a deficiency in the township and cannot be described as land in place (see Sec. 2276 R.S.; 43 U.S.C. 852).

The words "other lands equivalent thereto", found in school land grants to the State of Ohio, made by Section 7 of the act of April 30, 1802 (2 Stat. 173), and in the indemnity act of May 20, 1826 (4 Stat. 179), and the words "other lands of like quantity, found in the indemnity act of February 26, 1859 (11 Stat. 385), and in the codification thereof in Section 2275, supra, have been held to mean the same as the phrase "other lands of equal acreage" embraced in the amendment of that section by the act of February 28, 1891, supra. It is therefore held that the State is entitled to select for lands lost in place, other lands, acre for acre, regardless of price or value. *State of Oregon*, 18 L.D. 343; *State of California*, 32 L.D. 34.

In exchanges of unsurveyed school sections for public lands, through the medium of protraction, as provided for in amended Section 8 of the Taylor Grazing Act, the State gives up no title to the unsurveyed school sections, as it acquires no title to such sections until they are identified by survey. *United States* v. *Morrison*, 240 U.S. 192. Neither has it a mineral right in such unsurveyed lands which it may reserve. *Utah* v. *Lichliter*, 50 L.D. 231; *Utah* v. *Work*, 6 Fed. 2d. 675.

A determination by protraction of school sections merely gives a paper description of the lands for adjudication purposes. The identification of such sections on the ground is not accomplished, and the particular lands are not distinguished from the body of the unsurveyed public lands of which they are a part. Being unidentifiable on the ground, the protracted base lands cannot be ascertained, classified, or evaluated. Therefore, with regard to State exchanges specifically authorized under the

third paragraph of Section 8(c) of the Taylor Grazing Act, the exchanges cannot proceed upon the basis of equal value and must be considered solely on the basis of equal areas.

On December 23, 1942, the Assistant Secretary returned the papers in Phoenix 079725, and other cases, for further consideration in view of the Solicitor's memorandum of October 26, 1942, with the statement that in reconsidering these applications and in submitting our recommendations thereon, as well as applications of a similar nature submitted in the future, information should be given as to the basis for the exchange and why it was selected as the basis for the exchange. It was further stated that the value of the selected as well as the offered lands should be given, but that it was not considered necessary in determining value that a field appraisal be made of the lands embraced in each application for it is believed that an approximate value can sometimes be determined from secondary sources.

This office is of the opinion that the desired objective may be obtained to a large degree by refraining from promulgating the Solicitor's opinion of October 26, 1942, and leaving the regulations as they now stand, the Solicitor's opinion to be regarded as a statement to this office on policy. The General Land Office would thereupon examine all proposed exchange cases involving State-owned base lands, under Section 8(c) of the Taylor Grazing Act, with a view to determining, from a field examination or secondary sources, whether any great disparity in the values of the base and selected lands is present. If it should appear that the difference is so great that the consummation of the proposed exchange would be unconscionable and not in the public interest, negotiations will be opened with the State looking to a withdrawal or a modification of the application. If, on the other hand, the difference in values is not unreasonable, the exchange will be put through. In either event a memorandum reciting all of the findings as to the values involved will accompany the papers submitted to the Department for approval.

/s/ Fred W. Johnson
Commissioner

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

[Filed Aug. 18, 1975]

Pursuant to Rule 56, Federal Rules of Civil Procedure, defendant moves for summary judgment on the grounds that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

This motion is based upon the complaint, defendant's answer thereto and the statement of uncontroverted facts in the stipulation and pretrial order filed on June 16, 1975.

Defendant will file with the Court and serve upon opposing counsel the memorandum of legal authorities in support of this Motion for Summary Judgment on or before the 15th day of September, 1975. Defendant respectfully requests that a hearing on the Summary Judgment Motions filed by the parties be had upon special setting after the 15th day of September, 1975 at the convenience of the Court.

Respectfully submitted,

/s/ Ramon M. Child
RAMON M. CHILD
United States Attorney

/s/ Gerald S. Fish
GERALD S. FISH, Attorney
Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-3796

Attorneys for the Defendant

NOTICE OF APPEAL

[Filed Aug. 2, 1976]

Notice is hereby given that the defendant above named hereby appeals to the United States Court of Appeals for the Tenth Circuit from the Judgment and Decree of the above-entitled Court entered June 8, 1976.

/s/ Ramon M. Child
RAMON M. CHILD
United States Attorney

SUPREME COURT OF THE UNITED STATES

No. A-763

CECIL D. ANDRUS, Secretary of the Interior, PETITIONER

v.

UTAH

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 5, 1979.

/s/ Byron R. White
Associate Justice of the
Supreme Court of the
United States

Dated this 27th day of February, 1979.

SUPREME COURT OF THE UNITED STATES

No. 78-1522

CECIL D. ANDRUS, Secretary of the Interior, PETITIONER

v.

UTAH

ORDER ALLOWING CERTIORARI. Filed June 11, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 297015 31